THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.28689 of 1996

Dated:2.1.2007

Between
P.Appa Rao

.....Petitioner

and

1. The Chairman,
Visakhapatnam Port Trust
Visakhapatnam and another.

...Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.28689 of 1996

ORDER:

This writ petition is filed seeking a Certiorari to call for the records relating to and connected with proceedings No.E/M/PC.5524/9569, dated 22.9.1993 of the 2nd respondent and the proceedings No.A1/appeal/Mech/PAR/8726/93, dated 10-12-1993 and Proceedings No.A1/Appeal/Mech/PAR/8726/93 dated 24.2.1994 of the 1st respondent and to declare the same as arbitrary and illegal.

It appears that initially the petitioner was recruited as a casual labour in the Visakhapatnam Port Trust. Subsequently, he was appointed as Khalasi on regular basis with effect from 14.3.1975. According to the petitioner, he has discharged his

duties to the utmost satisfaction of his superiors and there was no occasion to point out with regard to his performance as Khalasi for all these years. While so, he was served with a charge sheet on 4.5.1993 by the 2nd respondent, for which he submitted his explanation. Having not satisfied with the explanation, the respondents have conducted a detailed enquiry into the matter and the disciplinary authority imposed a penalty of dismissal from service. Aggrieved by the same, the petitioner carried the matter in appeal before the appellate authority and the appellate authority confirmed the same.

The respondents filed a detailed counter-affidavit, denying the allegations made in the writ petition.

Learned counsel for the petitioner strenuously contended that neither the enquiry was conducted properly nor the order passed by the authorities stand the scrutiny of law, apart from the fact that, imposing penalty of dismissal from service for the

unauthorized absence from 9.2.1993 to 21.3.1993 is disproportionate to that of the misconduct alleged against the petitioner. He further contended that the petitioner is not an habitual absentee and the respondents have not taken the entire past record into consideration and imposed penalty of dismissal from service.

Learned Counsel for the respondents contended that neither the disciplinary authority nor the appellate authority has committed any irregularity calling for interference of this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned order and other material made available on record.

Learned counsel for the respondents produced the original record and service particulars, wherein it was noted that the petitioner was imposed with 10 penalties for the same misconduct i.e., unauthorized absence. His

increments were postponed thrice and pay was reduced five times by one or two stages each time and he was censured and finally, he was removed from service. In the articles of charge, it was made clear that he is a habitual absentee. In the explanation submitted by the petitioner, he did not deny the said allegations and simply admitted that due to domestic problems and health condition he was unable to attend the duties properly and he may be pardoned for the same. But this is not the first time. The petitioner was punished for such misconduct of unauthorized absence on the earlier occasions also. Therefore, it cannot be said that the impugned order passed by the disciplinary authority as confirmed by the appellate authority, is arbitrary or illegal. However, since the petitioner was served for more than 18 years, the authorities ought not to have imposed penalty of dismissal from service. The best way is to retire him from service compulsorily. Therefore, I am of the opinion that the punishment of dismissal from service is disproportionate to that of the misconduct.

Generally speaking, in such matters, it requires to be remanded to the disciplinary authority for taking appropriate action with regard to punishment. But, since the present writ petition is filed way back in the year 1996, I deem it appropriate to give a quietus to the matter here itself.

In view of the above, the impugned order passed by the disciplinary authority as confirmed by the appellate authority is modified to be read as, "the petitioner shall be retired compulsorily from service of the organization and he is entitled to all the benefits as per law."

With the above modification, the writ petition is disposed of accordingly. No costs.

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02-01-2006

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